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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/738,913	12/16/2003	Eckhard Alt	20168/10003	8357
34431 7590 06/19/2009 HANLEY, FLIGHT & ZIMMERMAN, LLC 150 S. WACKER DRIVE SUITE 2100 CHICAGO, IL 60606				
EXAMINER				
BUL VY Q				
ART UNIT		PAPER NUMBER		
3773				
MAIL DATE		DELIVERY MODE		
06/19/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/738,913

Applicant(s)

ALT, ECKHARD

Examiner

Vy Q. Bui

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1-6, 8-13, 15-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Jayaraman-5,893,887.

As to claims 1-6, 8-13, 15-21, Jayaraman-'887 (Figs. 4-12, for example; col. 2, lines 23-29) discloses an acutely angled end stent having two opposite end of 30° or 45° or 60° or 90° relative to an longitudinal axis of the stent and having radio-opaque coatings at the ends for easy viewing during a deployment substantially as recited in the claims. It is clearly that the coated ends of the angled stent are indeed fluoroscopically radio-opaque markers, which are intended for a user to view and orient the stent properly during a deployment of the stent inside a patient body as recited in the claims.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application

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by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-2, 9-10, 17-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Fischell et al.-7,252,679 B2.

As to claims 1-2, 9-10, 17-21, Fischell et al.-7,252,679 (Figs. 2B-2C, 3A-3B; abstract; C 2, L 3; C 6, L 12-29; for example) discloses stent 20/30 with an end angled at 30° or 45° or 60° or 90° relative to an longitudinal axis of the stent. Stent 20/30 have two opposite ends and radio-opaque marker 33 (F 2B-2C) at the acutely angled end for viewing and orienting the stent during a deployment by balloon 44 (F 3A-3B) substantially as recited in the claims.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 7 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jayaraman-5,893,887 in view of Chen-6,939,863.

As to claims 7 and 17, Jayaraman-'887 discloses substantially the claimed invention, except for a drug coating to prevent re-stenosis. However, Chen-'863 (col. 2, lines 25-34) discloses a stent with a drug eluting coating to prevent restenosis. It would have been obvious

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to one of ordinary skill in the art to provide a drug coating to Jayaraman-'887 stent as taught by Chen-'863, as this configuration would make Jayaraman-'887 stent more resistant to restenosis.

2. Claims 7 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischell et al.-7,252,679 B2 in view of Chen-6,939,863.

As to claims 7 and 17, Fischell-'679 discloses substantially the claimed invention, except for a drug coating to prevent re-stenosis. However, Chen-'863 (col. 2, lines 25-34) discloses a stent with a drug eluting coating to prevent restenosis. It would have been obvious to one of ordinary skill in the art to provide a drug coating to Fischell-'679 stent as taught by Chen-'863, as this configuration would make Fischell-'679 stent more resistant to restenosis.

Response to Arguments

Applicant's arguments filed (Remarks, paper 9/15/2008) have been fully considered but they are not persuasive.

The Applicant (Remarks, page 9, paper 9/15/2008) argued that "Jayaraman does not describe a stent that includes a visibility indicator including one or more markers or variable wall thickness. Instead, the only visibility characteristics described by Jayarmnan is a radio-opaque coat. However, a coating is not the same as a marker or a variable wall thickness." .

However, the radio-opaque coating at the ends are indeed the radio-opaque marker of Jayaraman stent for the viewing and orienting the stent properly during a deployment of the stent inside a patient body. The claims in the present invention recite "markers" but do not give any further structural limitation to further define the markers in the claims. It is clearly that the radio-opaque coatings at the ends of Jayaraman stent are well qualified for the recitation "markers" in the claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vy Q. Bui/
Primary Examiner, Art Unit 3773